



Minutes

Maryland State Commission on Criminal Sentencing Policy
House Office Building
Annapolis, MD 21041
December 8, 2009

Commission Members in Attendance:

Honorable Howard S. Chasanow, Chair
Delegate Curt S. Anderson
James V. Anthenelli, Esquire
Shannon E. Avery, Esquire
Chief Marcus L. Brown
Leonard C. Collins, Jr., Esquire
Honorable Arrie W. Davis
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
Major Bernard B. Foster, Sr.
Senator Lisa A. Gladden
Senator Delores G. Kelley
Patrick Kent, Esquire, *representing Elizabeth Julian, Esquire*
Laura L. Martin, Esquire
Secretary Gary D. Maynard
Honorable John P. Morrissey
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Eric Dunton
Jessica A. Rider
David Soulé, Ph.D.

Visitors:

Chief Judge Robert M. Bell
Claire Rossmark, Department of Legislative Services

1. Call to order

Judge Chasanow called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:10 p.m. when quorum was reached.

3. Approval of minutes, September 14, 2009 meeting

The minutes were approved as submitted.



4. Report from the Executive Director – Dr. David Soulé

Dr. Soulé had five items to discuss with the Commission. First, Dr. Soulé informed the Commissioners that the staff was in the process of drafting the Commission's 2009 Annual Report and to expect a copy of the draft via email within the next two weeks. Dr. Soulé indicated that the staff looked forward to receiving input on the report from the Commissioners.

Dr. Soulé then provided an update on the Maryland Automated Guidelines System (MAGS). The staff is currently working with programmers on the continued development of the automated system. On November 19, 2009, the staff held a focus group at the University of Maryland to review the MAGS application. The focus group was attended by Judge David Boynton from Montgomery County and Judge Philip Nichols from Prince George's County. Additional attendees included the law clerks for both of the judges, Amy Bills from the Montgomery County State's Attorney's Office, Brian Shefferman from the Office of the Public Defender, and Mark Buckley from the Maryland Division of Parole and Probation.

In addition, the Commission staff continues to work with developers at Applied Research Services (ARS) on the development of the sentencing/corrections simulation model. The developers recently completed Phase II, which included incorporation of data from the Division of Correction. The developers are finalizing the testing of the population projection component. The next step is to share these projections with the Division of Correction and get their feedback. Dr. Spier of ARS will then help guide the staff to utilize the model during the upcoming Legislative Session to serve as a final practice session.

On October 27th, Dr. Soulé conducted a training seminar on the guidelines for eight new circuit court appointees at the New Trial Judges Orientation held in Baltimore.

Finally, Dr. Soulé announced that Judge Chasanow was recently named as the "Washington, DC Best Lawyer 2010" in the area of Alternative Dispute Resolution.

5. Report from the Guidelines Subcommittee – Dr. Charles Wellford

Dr. Wellford presented the report of the Guidelines Subcommittee regarding two items.

A. Assigning offense score points for the presence of a weapon

Judge Chasanow reminded the Commission that it had discussed the issue of assigning points for weapon presence as opposed to usage extensively during meetings in 2005, 2006, and 2007. As a result of these discussions, the Commission decided that points should be assigned even when a weapon was present but not used. On August 26, 2009, staff received a letter from George Harper, a private attorney, arguing that the Commission's position is contradictory. Judge Chasanow explained that the present issue before the Commission was limited to amending the language in COMAR, the Guidelines Manual, and the Guidelines Worksheet to clarify the purported contradiction.

Dr. Wellford referred the Commission to a memorandum the Guidelines Subcommittee sent to the Commission outlining the proposed amendments. Specifically, the Guidelines Subcommittee recommended changing references to the "usage" or "use" of a weapon within COMAR, the Manual, and the Worksheet to "presence" in order to clarify any potential ambiguity regarding the Commission's position. Dr. Wellford then relayed the



comments of Judge Themelis during the Guidelines Subcommittee's discussion of the issue. Judge Themelis said he was opposed to assigning points when a weapon was not used, carried, or employed to aid in an escape.

Dr. Wellford asked the Commission to vote on the adoption of the proposed amendments. Judge Chasanow then opened the floor for discussion. Commissioner Patrick Kent echoed Judge Themelis's position that assigning offense score points for the mere presence of a weapon is contrary to the case law. Delegate Anderson agreed and added that assigning points for the presence of a weapon unfairly counts the effect of the weapon twice in sentencing an offender: first, in defining the category of the crime (e.g. armed robbery); and, second, in adding points to increase the guidelines range. Moreover, Delegate Anderson felt that doing so results in a situation where an offender might have only had a weapon locked in his trunk during a drug offense, yet the weapon is used against him during sentencing even though the offender never used it to further the offense.

Judge Chasanow expressed his reluctance to reopen the issue of assigning points for weapons. He refocused the discussion on making the language in COMAR and the Manual uniform and unambiguous. The proposed changes passed by a vote of 8 to 5.

B. Continued review of guidelines compliance and sentences by individual cell/matrix

Dr. Wellford presented the Commission with a document outlining average sentence by individual cell for each matrix. He explained the figures contained in the document and noted that the Subcommittee is continuing to look at two issues. First, are ABA plea sentences very different from non-ABA plea sentences and are they distorting the sentences for all cases? Second, is it time to modify the recommended guidelines sentences to more closely reflect the actual sentences that are being given?

The Guidelines Subcommittee's impression was that there was not much difference in ABA plea sentences and all other sentences. Senator Kelley noted that even if the data had revealed a significant difference, ABA pleas are the result of the parties' agreement to a sentence and help save judicial resources. Dr. Wellford added that no one on the Subcommittee has raised the issue of changing the definition of compliance to go back to strict compliance.

Commissioner Finci noted that within certain cells, especially those in the drug matrix, ABA plea sentences were much lower than all other sentences. He expressed his concerns that the guidelines may lose their relevance if they do not reflect the actual sentences given by judges. Commissioner Collins countered that the guidelines are meant to reflect judge's sentencing practices when they have discretion. ABA pleas by definition, however, are not a result of judges' discretion but rather the parties' agreement. Commissioner Finci indicated that he believes ABA pleas involve judicial discretion in that judges must agree to the plea before it is entered.

Dr. Wellford asked the Commission to review the data and forward any questions to either himself or Dr. Soulé in advance of the Subcommittee's next meeting.

**6. Report from the Subcommittee on Sentencing Drug Offenders – Delegate Curt Anderson**

Delegate Anderson began his report by asking the Commission to clarify the objectives of the Subcommittee. He believed that the Subcommittee was tasked with examining disparity among sentences for drug offenders. Senator Kelley responded that the Commission is statutorily charged with authorizing a system of correction options and with helping the state to better use scarce resources. She said that diverting nonviolent offenders to corrections options helps fulfill this charge.

Delegate Anderson next reviewed the most recent work of the Subcommittee. As a first step, the Subcommittee decided to update the MSCCSP's inventory of corrections options in order to assess the resources currently available for drug offenders. With assistance from staff, the Subcommittee developed a survey instrument to gather information about the type of drug treatment programs available in each jurisdiction and the target population. Staff created a report summarizing the survey's results.

Delegate Anderson said that Subcommittee was still collecting data and information on incarcerations alternatives in order to form recommendations for the full Commission. As an initial recommendation, Delegate Anderson asked the Commission to undertake a campaign to raise awareness of what programs are defined as corrections options and how the utilization of these programs impacts the calculation of guidelines compliance. The campaign would emphasize that sentences of corrections options are deemed compliant with the guidelines in certain situations. In an effort to raise awareness of these issues, the staff prepared and distributed a draft Guidelines E-News on the use of corrections options which would be sent to everyone on the E-News distribution list.

Judge Chasanow submitted the recommendation for vote. The Commission adopted the recommendation unanimously.

7. Date, time, and location for the next Commission Meeting

The next meeting was set for Tuesday, April 27, 2010 at the Judiciary Training Center in Annapolis, MD. The Commission will provide dinner and it will be made available starting at 5:00 p.m.

8. Old Business

There was no old business to address.

9. New Business and announcements

Judge Chasanow announced that the terms of Commissioners Len Collins, Patrick Kent, and Judge Themelis were ending soon and that he wanted to recognize their contributions to the Commission. Judge Chasanow thanked the three of them for their service to the citizens of Maryland as members of the Commission. Each was presented with a plaque in recognition of their service. Chief Judge Bell accepted a plaque on behalf of Judge Themelis, who was absent.

10. Adjournment

The meeting adjourned at 5:50 p.m.